

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

FELIX ANTONIO COLON,

Plaintiff,

-against-

9:03-CV-1018  
(LEK/DEP)

KATHLEEN H. SAWYER, *et al.*,

Defendants.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on February 1, 2006, by the Honorable David E. Peebles, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 51). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by both Defendants and Plaintiff, which were filed on February 15, 2006, and March 2, 2006, respectively. Objections (Dkt. Nos. 53 & 54).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

**ORDERED**, that the Report-Recommendation is **APPROVED** and **ADOPTED in its ENTIRETY**; and it is further

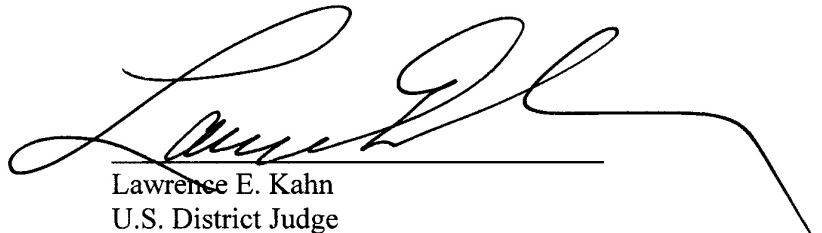
**ORDERED**, that Defendants' Motion for summary judgment (Dkt. No. 37) is **GRANTED IN PART** as to Plaintiff's Eighth Amendment claims of future exposure to environmental tobacco smoke ("ETS"), and as to all claims against Defendants Sawyer, Lappin, Chester, Sherrod, Copenhaver, Fink and Baldwin, as discussed in Judge Peebles' Report-Recommendation. The claims against those Defendants are **DISMISSED**, and those Defendants are **DISMISSED** from this action; and it is further

**ORDERED**, that Defendants' Motion for summary judgment (Dkt. No. 37) is **DENIED IN ALL OTHER RESPECTS**; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: March 20, 2006  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge